



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/157788

PRELIMINARY RECITALS

Pursuant to a petition filed May 20, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner meets the criteria necessary for Medicaid payment for orthodontia.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lucy Miller, Nurse Consultant on behalf of

Dr. Robert Dwyer, DDS

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. This appeal was filed on behalf of Petitioner to contest the denial of a request for orthodontia. Petitioner was notified of the denial by letter dated in late April 2014 from Petitioner's HMO – Children's Community Health Plan /Wisconsin Independent Dentists Association.
3. Petitioner's Salzman Index was determined on at least two occasions. The highest score was 25.
4. Petitioner (██████████) uses ibuprofen approximately 2 times a week for pain associated with the teeth. She has trouble eating meat and biting into foods such as apples.

DISCUSSION

Orthodontia is not an MA-covered service. Wis. Admin. Code, §DHS 107.07(4)(j). However, medical services provided to recipients under age 21 pursuant to Early and Periodic Screening, Diagnosis and Treatment (EPSDT) must be covered if the EPSDT health assessment and evaluation indicates that they are needed. 42 C.F.R. §441.56(c); Wis. Admin. Code, §DHS 107.22(4). Prior authorization is granted when the generic authorization criteria at §DHS 107.02(3) are met. Those criteria include the requirement of medical necessity. The DHCAA has defined medical necessity in its policy document, the Prior Authorization Guidelines Manual, page 125.004.03. The Manual requires a Salzman Index score of 30, or the documentation of unusual circumstances that make the recipient's malocclusion handicapping. See also www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=15&s=2&c=530&nt=Severe+Malocclusion, which is the Department's MA Providers Handbook, specifically related to dental issues, Topic 2909.

The Salzman score is a rating of the person's dental malocclusion, that is, how far from normal occlusion the person's teeth are. Here Petitioner's Salzman score was determined on at least two times, with a low of 7 and a high of 25. Unusual or extenuating circumstances could be such that, despite a low Salzman, the malocclusion causes the person to have unusual difficulty eating or speaking or the person has documented psychological problems caused by the abnormal occlusion.

Petitioner was represented by her father. He notes that molds and x-rays were taken by Petitioner's dentist about 2 to 3 years ago but when Petitioner was switched to an HMO he could no longer treat her. He argues that since the molds and x-rays constitute commencement of the dental work and it should be completed.

Though this has been ongoing for some period of time, Petitioner's Salzman has not exceeded 25. An objection is made to the Salzman scoring by dental professionals who have not seen Petitioner but I note that the scoring is based upon x-rays and molds. Thus the commencement argued for was actually the preparatory work for the Salzman scoring. Further, a qualifying Salzman score has not been submitted on behalf of Petitioner by those professionals who had seen her.

The question then becomes whether there are extenuating circumstances. Though Petitioner does occasionally take ibuprofen and has difficulty with some foods, this is not sufficient to demonstrate unusual difficulty eating or speaking and there is no documentation from a mental health professional as to psychological issues.

Finally, the Division of Hearings and Appeals must limit its review to the program regulation as set forth in statutes, federal regulations, administrative code provisions and policy established pursuant to the law. It cannot create new or case specific standards.

CONCLUSIONS OF LAW

Petitioner does not meet the Medicaid criteria for orthodontia because her Salzman score is less than 30 and extenuating circumstances have not been shown to exist.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

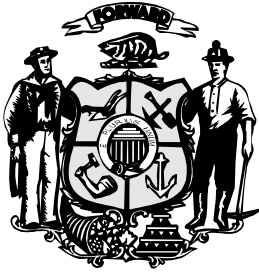
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of September, 2014

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 29, 2014.

Division of Health Care Access and Accountability